

To: Avila, Aaron[avila.aaron@epa.gov]; Gardinier, Susan[Gardinier.Susan@epa.gov]; Kellmeyer, Joseph[JKELLMAYER@thompsoncoburn.com]
Cc: Kemper, Ryan Russell[rkemper@thompsoncoburn.com]; Krallman, John[krallman.john@epa.gov]; Steinbauer, Gary[steinbauer.gary@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Nelson, Leverett[nelson.leverett@epa.gov]
From: Garypie, Catherine
Sent: Mon 5/1/2017 8:21:21 PM
Subject: RE: Veolia ADR: Conference call next Tuesday

All – this email responds to Judge Avila's emails of April 3 & 13 (below). It is the position of Region 5 that this matter should be removed from the Board's ADR program and the parties should continue pursuing settlement outside of the Board's ADR program. Region 5 and Veolia officials currently have a verbal settlement in principle. The verbal settlement in principle has been approved by Region 5 but we understand that it remains under review at Veolia. Assuming Veolia approves the verbal settlement in principle, Region 5 anticipates reducing the settlement in principle to writing on or before May 15. At that time Region 5 anticipates having a better sense of how long it will request that the stay be continued while a detailed settlement is finalized.

Catherine Garypie, Associate Regional Counsel

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From: Avila, Aaron

Sent: Thursday, April 13, 2017 3:45 PM

To: Garypie, Catherine <garypie.catherine@epa.gov>; Gardinier, Susan <Gardinier.Susan@epa.gov>; Kellmeyer, Joseph <JKELLMEYER@thompsoncoburn.com>

Cc: Kemper, Ryan Russell <rkemper@thompsoncoburn.com>; Krallman, John <krallman.john@epa.gov>; Steinbauer, Gary <steinbauer.gary@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>

Subject: RE: Veolia ADR: Conference call next Tuesday

All:

I request that Veolia and the Region provide their responses to my April 3, 2017 email on or before May 1.

Aaron P. Avila

Environmental Appeals Judge

Environmental Appeals Board

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW – Mailcode 1103M

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Email: avila.aaron@epa.gov

From: Garypie, Catherine
Sent: Thursday, April 13, 2017 4:01 PM
To: Avila, Aaron <avila.aaron@epa.gov>; Gardinier, Susan <Gardinier.Susan@epa.gov>; Kellmeyer, Joseph <JKELLMEYER@thompsoncoburn.com>
Cc: Kemper, Ryan Russell <rkemper@thompsoncoburn.com>; Krallman, John <krallman.john@epa.gov>; Steinbauer, Gary <steinbauer.gary@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>
Subject: RE: Veolia ADR: Conference call next Tuesday

All – Region 5 hereby requests that the April 17 deadline for ADR information from the Parties be moved to May 1. Region 5 staff is still in the process of conferring with both Region 5 and EPA headquarters management regarding this matter. The extension is requested because the EPA personnel involved have very full schedules and many are employees who are very new to the Agency. Please let me know if this is acceptable. Thank you for your consideration.

Catherine Garypie, Associate Regional Counsel

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EMAIL: garypie.catherine@epa.gov

From: Avila, Aaron
Sent: Thursday, April 6, 2017 3:19 PM
To: Gardinier, Susan <Gardinier.Susan@epa.gov>; Kellmeyer, Joseph <JKELLMEYER@thompsoncoburn.com>
Cc: Kemper, Ryan Russell <rkemper@thompsoncoburn.com>; Garypie, Catherine <garypie.catherine@epa.gov>; Krallman, John <krallman.john@epa.gov>; Steinbauer, Gary <steinbauer.gary@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>
Subject: RE: Veolia ADR: Conference call next Tuesday

All:

In this Part 71 proceeding, I wanted to provide additional context to the reference to 40 C.F.R. § 124.19(j) in my Monday email—the Board relies on Part 124 regulations and its Part 124 decisions as precedent in Part 71 proceedings. See, e.g., *In re Peabody W. Coal Co.*, 15 E.A.D. 757, 767 n.11 (EAB 2013); *In re Peabody W. Coal Co.*, 14 E.A.D. 712, 718-21 (EAB 2010).

Aaron P. Avila

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Email: avila.aaron@epa.gov

From: Avila, Aaron

Sent: Monday, April 03, 2017 5:17 PM

To: Gardinier, Susan <Gardinier.Susan@epa.gov>; Kellmeyer, Joseph <JKELLMEYER@thompsoncoburn.com>

Cc: Kemper, Ryan Russell <rkemper@thompsoncoburn.com>; Garypie, Catherine <garypie.catherine@epa.gov>; Krallman, John <krallman.john@epa.gov>; Steinbauer, Gary <steinbauer.gary@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Nelson, Leverett

<nelson.leverett@epa.gov>

Subject: RE: Veolia ADR: Conference call next Tuesday

All:

I am following-up on the March 31, 2017 email from Veolia's counsel. In response to Veolia's request, I am cancelling tomorrow's ADR status conference and I ask that Veolia and the Region provide me by April 17 their position and rationale on whether: (1) this matter should move forward in the Board's ADR program, with suggested dates for rescheduling the ADR status conference, submission of issue summaries, and the initial ADR meeting before the stay in the Board's March 15 Order (staying proceedings in this matter until May 15) terminates or (2) this matter should be removed from the Board's ADR program and the parties are interested in pursuing settlement outside of the Board's ADR program. If the latter option, please also provide me the timeframe for pursuing those settlement discussions and the bases on which the parties would ask that proceedings in this matter be stayed pending those discussions. I also note that, because the Region has not filed its response, the Region may withdraw the permit and prepare a new draft permit pursuant to 40 C.F.R. § 124.19(j).

Under the Board's ADR program, the assigned Settlement Judge may determine at any time that use of the Board's ADR program may no longer be appropriate, yet that does not preclude the parties from pursuing settlement outside of the Board's ADR program. Environmental Appeals Board Alternative Dispute Resolution Program Information Sheet at 1 & 4. The information I have requested by April 17 will aid me in assessing whether it is appropriate to continue with the Board's ADR program in this matter.

Please send your position and rationale to me and Susan Gardinier Kimball and copy all other counsel. I will be in touch after April 17.

Aaron P. Avila

Environmental Appeals Judge

Environmental Appeals Board

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